IN THE

Supreme Court of the United States

THE BANK OF JASPER, A CORPORATION *Petitioner*	October Term, 1921
VERSUS	
FIRST NATIONAL BANK OF ROME, GEORGIA, A CORPORATION *Respondent*	No. 76

SUPPLEMENTAL BRIEF FOR RESPONDENT

Petitioner's brief was not prepared in time to permit reply thereto in Respondent's main brief. Hence this supplemental brief.

I.

If Respondent had delayed appealing from the order of the Circuit Court of Hamilton County, Florida, until after final decree, then the discussion on pages 16 *ea seq* of Petitioner's brief might have some applicability.

The distinction between the special appeals under consideration and all appeals held by the Florida

Supreme Court to constitute a general appearance, may be made more sharply apparent by an illustration. Respondent did not come *in contact with* the merits of the State Court cases. The "merits" of those cases may be likened to an electric wire. If no contact with the wire occurs, no harm is done. Respondent's special appeals not having come in contact with the merits are unharmed. Stretching the adjudications of the Florida Supreme Court to their limit, the most they hold is that *by coming in contact with the merits of the case through an appeal* AFTER A FINAL DECREE, *the question as to service is electrocuted.*

The Florida Supreme Court in *Rome Insurance Company et al, v. Corbett*, 66 Fla. 438, so to speak, played with the matter of these "Special Appeals" constituting a general appearance, but let it go. The Florida Supreme Court in the Corbett case recognized that that case presented a situation different from those cases in which the appeal had been held to constitute a general appearance.

II.

The inapplicability of garnishment cases to the instant case is well shown by *Pennington v. Fourth National Bank*, 243 U. S. 269, 61 Law. Ed. 713, which is cited and relied upon on pages 53 and 55 of Petitioner's brief. That case presented merely a form of garnishment in equity. If Mrs. Pennington's application for an order of Court to tie up her husband's bank account in the Fourth National Bank had denied that such an account existed and had denied that her husband had any money in the Fourth National Bank, is it to be supposed the

Court in the face of such an application would have entered an order against the Bank restraining it from paying money to the husband?

A denial in a bill that funds exist cannot support a prayer in the same bill that payment of the same identical funds be enjoined.

Mrs. Pennington was declared to be a creditor of her husband and therefore entitled to garnish his bank account. *The Complainants in the Florida State Court cases were not creditors* in any sense of the term. *They were debtors* undertaking to avoid their debt.

We have in Florida a statute providing for EQUITABLE GARNISHMENT. This is Section 1948 of the General Statute of Florida and reads:

> PROCEEDINGS PRESCRIBED. — If any suit shall be commenced for relief in equity in any court against any defendant residing out of this State, and any other defendant within the same having in his hands effects of, or being otherwise indebted to, such absent defendant, and the appearance of such absentee be not entered and security given to the satisfaction of the court for performing the decree, upon affidavit that such defendant is out of the State, or that upon inquiry at his usual place of abode he cannot be found so as to be served with process, the court may make an order and require surety, if it shall appear necessary, to restrain the defendant in this State from paying or conveying away, or secreting the debts by him owing to, or the effects in his hands, of such absent defendants, or to restrain the absent defendant from conveying away or secreting or removing the property in litigation, or make an order sequestrating the property which may be neces-

sary to secure the plaintiff if he finally succeeds; and may order such debts to be paid, and effects to be delivered up to said plaintiff, upon his giving sufficient security for the return thereof.

"Service upon the absent defendant shall be had in the manner provided by law, and if the defendant does not appear and answer, plead or demur to the bill, decrees pro confesso and final decree may be ordered as in other cases; and the court shall make an order requiring the complainant to give security, to be approved by the court or by its clerk, for abiding such future orders as may be made for restoring the estate or effects to the absent defendant upon his appearance and answering the bill; and if the complainant shall refuse to give or not be able to procure such security, the effects shall remain under the direction of the court, in the hands of a receiver, or otherwise, for so long a time, and shall be disposed of in such manner, as to the court shall seem fit."

Respondent's counsel gave careful study to this Statute when the State Court suits were first filed, and by reason of the emphatic denials in the bills that any debt existed saw clearly that the Statute did not support the bills in any particular.

III.

Petitioner argues that Respondent did not question the effect of the State Court decrees in the Federal District Court and states that the only ground of demurrer which in any way could have done this was the first ground of the demurrer to the pleas in question. See page 76 of Petitioner's brief.

The last ground of this demurrer specifically

raises the very point mentioned. This ground of demurrer reads:

> "No decree entered in said chancery suit could effect the rights of the plaintiff herein arising out of the certificate of deposit set up in said court." (R43)

Again each replication which Respondent filed to said pleas concludes with language to the following effect:

> "Wherefore this plaintiff says that no decree entered in said chancery suit of C. L. Adams vs. Rome Insurance Company et al., could effect or take away any of the rights of the plaintiff herein, arising out of the certificate of deposit herein sued upon." (R 46)

The ground work of Respondent's position from the inception of the State Court cases has been the principles laid down in *Pennoyer vs. Neff*, 95 U. S. 714, 24 L. Ed. 565 and *Hart vs. Samson*, 110 U. S. 151, 28 L. Ed. 101.

Respondent's theory has been consistent and unaltered in every argument from first to last throughout the various stages of this litigation. The Federal District Court had squarely presented to it not only in the argument but in the pleadings, as above shown, the very propositions which Respondent now contends for and has contended for throughout.

Respectfully submitted,

W. E. KAY,
J. L. DOGGETT,
L. A. DEAN,
HENRY C. CLARK,
Attorneys and Counsel for Respondent.